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10/761,783	01/21/2004	Fahd Bin Jawad Pirzada	016295.1523 (DC-05823)	3540

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EXAMINER	
GILLIS, BRIAN J	

ART UNIT	PAPER NUMBER
2141	

NOTIFICATION DATE	DELIVERY MODE
09/03/2008	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	10/761,783	JAWAD PIRZADA ET AL.	
	Examiner	Art Unit	
	Brian J. Gillis	2141	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *04 August 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-26* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-26* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *21 January 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "the particular network protocol" in lines 17-18 and 19. There is insufficient antecedent basis for this limitation in the claim.

Claim 8 recites "tangible computer-readable media". The metes and bounds of the claim can not be determined.

Claim 15 recites the limitation "the information handling system" in line 12. There is insufficient antecedent basis for this limitation in the claim.

As for claims 2-7, 9-14, and 16-26 which claim dependency from claims 1, 8, and 15, these claims are also rejected under 35 U.S.C. 112 second paragraphs per the rationale of their corresponding independent claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rusch (US Patent #6,801,777) in view of Andrew et al (US Patent #7,369,850).

Claim 1 discloses a method for dynamically switching between network protocols, the method comprising: conducting network communications from a client system via a first network protocol; receiving, in the client system, performance data for the first network protocol; receiving, in the client system, performance data for a second network protocol available to the client system; while conducting network communications with the first network protocol, automatically determining whether switching from the first network protocol to the second network protocol would improve performance for the client system; and in response to determining that switching to the second network protocol would cause improved performance for the client system, automatically switching from the first network protocol to the second network protocol; providing a user interface for receiving an instruction from a user to switch network protocols; in response to receiving an instruction from a user to switch to another

particular protocol, switching from the second network protocol to the particular network protocol, regardless of whether switching from the second network protocol to the particular network protocol would improve performance for the client system. Rusch teaches a connection to the first network is made (Figure 2, column 6, lines 39-41 and 55-65), the device receives performance information regarding the network (column 6, lines 39-54), the devices receives data for other networks (column 6, lines (39-54), the device monitors the connections and makes a determination to switch networks (column 6, line 66 – column 7, line 6), and an automatic switch between the networks is made (column 6, lines 10-12, and column 6, line 66 - column 7, line 6). It fails to teach providing a user interface for receiving an instruction from a user to switch network protocols and in response to receiving an instruction from a user to switch to another particular protocol, switching from the second network protocol to the particular network protocol, regardless of whether switching from the second network protocol to the particular network protocol would improve performance for the client system. Andrew et al teaches providing a user interface for a user to switch connections (Figure 3, column 2, lines 24-35, and column 6, lines 4-15) and a user may make a selection to make a connect to a different connection and override the choice that was made by the system (Figure 3, column 2, lines 24-35, and column 6, lines 4-15).

Rusch and Andrew et al are analogous art because they are both related to establishing wireless connections.

At the time of the invention it would have been obvious to a person of ordinary skill in the art to use the user selection feature in Andrew et al with the system in Rusch

because a user is able still decide which connection is desirable (Andrew, column 2, lines 14-16).

Claim 2 discloses the method of claim 1, wherein the first network protocol and second network protocol comprise a wireless network protocol selected from the group consisting of 802.11a, 802.11b and 802.11g. Rusch further teaches the capability to use the IEEE wireless standards (column 2, lines 52-55).

Claim 3 discloses the method of claim 1, further comprising: receiving, in the client system, performance data for a third network protocol available to the client system; while conducting network communications with the first network protocol automatically determining whether switching from the first network protocol to the third network protocol would improve performance for the client system; and in response to determining that switching to the third network protocol would cause improved performance for the client system, automatically switching from the first network protocol to the third network protocol. Rusch further teaches the device receives information on various networks available (column 6, lines 39-54), the device monitors the connections and makes a determination to switch networks (column 6, line 66 – column 7, line 6), and an automatic switch between the networks is made (column 6, lines 10-12, and column 6, line 66 - column 7, line 6).

Claim 4 discloses the method of claim 1, further comprising: determining that switching to the second network protocol would cause improved performance based on energy consumption for the client system; and switching from the first network protocol to the second network protocol. Rusch further teaches the device makes a switch

based on power consumption (column 5, line 55 – column 6, line 12) and the device switches networks (column 6, line 66 - column 7, line 6).

Claim 5 discloses the method of claim 1, further comprising: storing performance data for the first network protocol and second network protocol in the client system; and accessing the performance data for the first network protocol and second network protocol. Rusch further teaches the system processor obtains and stores performance data for the networks (column 3, lines 45-65 and column 5, lines 1-3) and the data obtained is used by the device (column 3, lines 45-65, and column 5, lines 1-3).

Claim 6 discloses the method of claim 1, wherein performance data for the first network protocol and second network protocol comprises signal quality data. Rusch further teaches quality of service data for the network is stored (column 3, lines 45-65).

Claim 7 discloses the method of claim 1, wherein performance data for the first network protocol and second network protocol comprises signal strength data. Rusch further teaches quality of service data for the network is stored (column 3, lines 45-65).

Claim 8 discloses an information handling system for dynamically switching between network protocols, the information handling system comprising: a user interface configured to receive instructions from a user to switch network protocols; a receiver module including logic instructions stored in tangible computer-readable media and operable to receive communications governed by at least two network protocols; a performance data module logic instructions stored in tangible computer-readable media and associated with the receiver module, the performance data module operable to obtain network performance data for the at least two network protocols; and a dynamic

switching module logic instructions stored in tangible computer-readable media and associated with the performance data module, the dynamic switching module operable to monitor performance data and dynamically switch between network protocols based on the network performance data; and switch between network protocols in response to an instruction from a user via the user interface to switch to a particular network protocol, regardless of whether switching from to the particular network protocol would improve performance for the information handling system. Rusch teaches receiving communications from networks (Figure 1, 106), the device monitors the connections and makes a determination to switch networks (column 6, line 66 – column 7, line 6), and an automatic switch between the networks is made (column 6, lines 10-12, and column 6, line 66 - column 7, line 6). It fails to teach a user interface configured to receive instructions from a user to switch network protocols and switch between network protocols in response to an instruction from a user via the user interface to switch to a particular network protocol, regardless of whether switching from to the particular network protocol would improve performance for the information handling system. Andrew et al teaches providing a user interface for a user to switch connections (Figure 3, column 2, lines 24-35, and column 6, lines 4-15) and a user may make a selection to make a connect to a different connection and override the choice that was made by the system (Figure 3, column 2, lines 24-35, and column 6, lines 4-15).

Rusch and Andrew et al are analogous art because they are both related to establishing wireless connections.

At the time of the invention it would have been obvious to a person of ordinary skill in the art to use the user selection feature in Andrew et al with the system in Rusch because a user is able still decide which connection is desirable (Andrew, column 2, lines 14-16).

Claim 9 discloses the information handling system of claim 8, further comprising a performance data storage module operable to store performance data, the performance data storage module associated with the performance data module and the dynamic switching module. Rusch further teaches the obtained network performance data is stored (Figure 1, column 5, lines 1-3).

Claim 10 discloses the information handling system of claim 9, wherein the performance data storage module further comprises at least one register, the at least one register operable to store performance data. Rusch further teaches the data is stored in a storage element (column 5, lines 1-3).

Claim 11 discloses the information handling system of claim 8, wherein the dynamic switching module further comprises: a network protocol setting module operable to identify wireless communications according to the at least two network protocols; a performance data comparison module operable to compare performance data for the at least two network protocols, and determine if switching to a second network protocol would improve network performance; and the dynamic switching module operable to switch to a second network protocol if the performance data comparison module determines that switching to a second network protocol would cause improved performance. Rusch further teaches receiving communications from

networks (Figure 1, 106), the device monitors the connections and makes a determination to switch networks (column 6, line 66 – column 7, line 6), and an automatic switch between the networks is made (column 6, lines 10-12, and column 6, line 66 - column 7, line 6).

Claim 12 discloses the information handling system of claim 8, wherein the at least two network protocols comprise wireless network protocols selected from the group consisting of 802.11a, 802.11b and 802.11g. Rusch further teaches the capability to use the IEEE wireless standards (column 2, lines 52-55).

Claim 13 discloses the information handling system of claim 8, wherein the performance data module further comprises a signal quality indicator operable to monitor signal quality associated with communications according to each of the at least two network protocols. Rusch further teaches quality of service data for the network is stored (column 3, lines 45-65).

Claim 14 discloses the information handling system of claim 8, wherein the performance data module further comprises a signal strength indicator operable to monitor received signal strength of communications according to each of the at least two network protocols. Rusch further teaches quality of service data for the network is stored (column 3, lines 45-65).

Claim 15 discloses a wireless network access card for dynamically switching between network protocols, the wireless network access card comprising: a performance data receiver module, operable to receive performance data for communications according to at least two network protocols; and a dynamic switching

module associated with the performance data receiver module, the dynamic switching module operable to monitor and compare performance data of at least two network protocols and dynamically switch network protocols based on performance data; and switch between network protocols in response to a user instruction received via a user interface to switch to a particular network protocol, regardless of whether switching from to the particular network protocol would improve performance for the information handling system. Rusch teaches the device receives data from the networks (Figure 1, 106), and an automatic switch between the networks is made (column 6, lines 10-12, and column 6, line 66 - column 7, line 6). It fails to teach switch between network protocols in response to a user instruction received via a user interface to switch to a particular network protocol, regardless of whether switching from to the particular network protocol would improve performance for the information handling system. Andrew et al teaches providing a user interface for a user to switch connections (Figure 3, column 2, lines 24-35, and column 6, lines 4-15) and a user may make a selection to make a connect to a different connection and override the choice that was made by the system (Figure 3, column 2, lines 24-35, and column 6, lines 4-15).

Rusch and Andrew et al are analogous art because they are both related to establishing wireless connections.

At the time of the invention it would have been obvious to a person of ordinary skill in the art to use the user selection feature in Andrew et al with the system in Rusch because a user is able still decide which connection is desirable (Andrew, column 2, lines 14-16).

Claim 16 discloses the wireless network access card of claim 15, the dynamic switching module further comprising: a network protocol setting module operable to identify wireless communications according to the at least two network protocols; a performance data comparison module operable to compare performance data for the at least two network protocols and determine if switching to a second network protocol would improve performance; and the dynamic switching module operable to switch to a second network protocol if the performance data comparison module determines that switching to a second network protocol would cause improved performance. Rusch further teaches receiving communications from networks (Figure 1, 106), the device monitors the connections and makes a determination to switch networks (column 6, line 66 – column 7, line 6), and an automatic switch between the networks is made (column 6, lines 10-12, and column 6, line 66 - column 7, line 6).

Claim 17 discloses the wireless network access card of claim 15, further comprising at least one storage register, the at least one storage register associated with the performance data receiver module and the dynamic switching module and operable to receive performance data from the performance data receiver module and provide performance data to the dynamic switching module. Rusch further teaches the obtained network performance data is stored in a storage element (Figure 1, column 5, lines 1-3).

Claim 18 discloses the wireless network access card of claim 15, wherein the performance data receiver module further comprises: a signal quality indicator operable to monitor signal quality associated with communications according to each of the at

least two network protocols; and a signal strength indicator operable to monitor received signal strength associated with communications according to each of the at least two network protocols. Rusch further teaches quality of service data which can include signal quality for the network is stored (column 3, lines 45-65) and quality of service data which can include signal strength for the network is stored (column 3, lines 45-65).

Claim 19 discloses the wireless network access card of claim 15, wherein the at least two network protocols comprise wireless network protocols selected from the group consisting of 802.11a, 802.11b and 802.11g. Rusch further teaches the capability to use the IEEE wireless standards (column 2, lines 52-55).

Claim 20 discloses the wireless network access card of claim 15, further comprising a receiver module operable to receive communications governed by the at least two network protocols. Rusch further teaches the device receives data for various networks (column 6, lines (39-54).

Claim 21 discloses the method of claim 1, further comprising: receiving input from a user regarding one or more performance factors to be used in determining whether to dynamically switch between network protocols; and determining whether to switch from the first network protocol to the second network protocol based at least on the user input regarding the one or more performance factors. Rusch further teaches the user inputs preferences into the device (column 5, lines 55 – column 6, line 12) and the network switch is based on the user preferences (column 7, lines 1-6).

Claim 22 discloses the method of claim 21, wherein the input received from the user regarding one or more performance factors comprises at least one of: a selection

from a set of performance factors of one or more performance factors to be used in determining whether to dynamically switch between network protocols; and a ranking of one or more performance factors. Rusch further teaches the user is able to select a factor to be used in determining a network switch (column 5, line 55 – column 6, line 12).

Claim 23 discloses the information handling system of claim 8, wherein the dynamic switching module is operable to dynamically switch between network protocols based on the network performance data and input from a user regarding one or more performance factors to be used in determining whether to dynamically switch between network protocols. Rusch further teaches the network switch is based on the network data and user preferences (column 7, lines 1-6).

Claim 24 discloses the information handling system of claim 23, wherein the input received from the user regarding one or more performance factors comprises at least one of: a selection from a set of performance factors of one or more performance factors to be used in determining whether to dynamically switch between network protocols; and a ranking of one or more performance factors. Rusch further teaches the user is able to select a factor to be used in determining a network switch (column 5, line 55 – column 6, line 12).

Claim 25 discloses the wireless network access card of claim 15, wherein the dynamic switching module is operable to dynamically switch network protocols based on performance data and input from a user regarding one or more performance factors to be used in determining whether to dynamically switch between network protocols.

Rusch further teaches the network switch is based on the network data and user preferences (column 7, lines 1-6).

Claim 26 discloses the wireless network access card of claim 25, wherein the input received from the user regarding one or more performance factors comprises at least one of: a selection from a set of performance factors of one or more performance factors to be used in determining whether to dynamically switch between network protocols; and a ranking of one or more performance factors. Rusch further teaches the user is able to select a factor to be used in determining a network switch (column 5, line 55 – column 6, line 12).

Response to Arguments

Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn. The amendments with the response filed August 4, 2008 however necessitated new grounds of rejection.

Applicant's arguments with respect to claims 1, 8, and 15 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian J. Gillis whose telephone number is (571)272-7952. The examiner can normally be reached on M-F 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia can be reached on 571-272-3880. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Brian J Gillis
Examiner
Art Unit 2141

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8/25/2008

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